Library of Congress

Copyright Royalty Board

37 CFR Part 383  

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: Comments and objections, if any, are due no later than December 9, 2019.

ADDRESSES: You may submit comments and objections, identified by docket number 19–CRB–0006–NSR (2021–2025), by any of the following methods:

- For further information contact: Anita Blaine, Program Specialist, by telephone at (202) 707–0078, or by email at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2019, the Copyright Royalty Judges (Judges) received a joint motion from SoundExchange, Inc., and Sirius XM Inc. to adopt a settlement of their interests regarding the rates and terms for 2021–2025 for certain new subscription services (NSS). Joint Motion to Adopt Settlement, Docket No. 19–CRB–0006–NSR (2021–2025).

The parties request that the Judges adopt the settlement in its entirety as a settlement of rates and terms under Sections 112(e) and 114 of the Copyright Act for new subscription services of the type at issue in the captioned proceeding, i.e., music services provided to residential subscribers as part of a cable or satellite television bundle subject to royalty rates and terms in 37 CFR part 383. Joint Motion at 1. SoundExchange represents performers. Sirius XM relies on the royalty rates and terms in 37 CFR part 383 for music programming it provides through the DiSH satellite television service. The parties believe that Sirius XM is the only provider of a Part 383 service participating in this proceeding. Joint Motion at 2. The Judges hereby publish the settlement and request comments from the public.

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license that allows for the public performance of sound recordings by means of a digital audio transmission by, among others, new subscription services. 17 U.S.C. 114(f)(1)(A). For purposes of the section 114 license, a new subscription service is a “service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.” 17 U.S.C. 114(j)(8).

The settlement incorporates the same royalty rate structure presently set forth in 37 CFR part 383, with annual 3% increases in the per-subscriber fee during the coming rate period. The parties have also agreed that certain terms in Part 383 should be those finally determined in the 2018 proceeding (Docket No. 19–CRB–0005–WR (2021–2025)), rather than those determined in Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the rates and terms for the sections 114 and 112 statutory licenses. 17 U.S.C. 801(b)(1), 804(b)(3)(A). The current proceeding commenced in February 2019 for rates and terms that will become effective on January 1, 2021, and end on December 31, 2025. 84 FR 6021 (Feb. 25, 2019).

The Judges must provide “an opportunity to comment on the agreement” to participants and non-participants in the rate proceeding who “would be bound by the terms, rates, or other determination set by any agreement. . . .” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to the agreement’s adoption as a basis for statutory terms and rates.” Id.

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [in the proceeding] objects to the agreement. . . .” 17 U.S.C. 801(b)(7)(A)(ii). Participants in the rate proceeding who object to the agreement must file a timely objection with the Judges for approval.

Proposed Adjustments to Rates and Terms

The settlement incorporates the same royalty rate structure presently set forth in 37 CFR part 383, with annual 3% increases in the per-subscriber fee during the coming rate period. The parties have also agreed that certain terms in Part 383 should be those finally determined in the 2018 proceeding (Docket No. 19–CRB–0005–WR (2021–2025)), rather than those determined in Chapter 8 of the Copyright Act.
an SDARS (satellite radio and "preexisting" subscription services) proceeding because the parties will have an opportunity to litigate terms issues in Web V, and the Web V terms will be in effect for the same period as covered by this proceeding. In other respects, the settlement preserves the existing provisions of Part 383 with only minor updating. Joint Motion at 2.

The fact that the Settlement includes proposed terms that have not yet been established in the Web V proceeding may raise concern as to whether participants and non-participants in the rate proceeding who would be bound by the terms, rates, or other determination set by any agreement are properly afforded the aforementioned statutory opportunities to object or comment on the agreement. However, the Judges take notice that it is inappropriate for agreements to incorporate and/or rely in part on events, facts or determinations that have not yet been established, e.g., references to adjustments based on yet to be determined consumer price index measurements. The Judges are also mindful that Congress intended to facilitate and encourage settlement agreements. See, H.R. Rep. No. 108–408, at 24 and 30 (2002). Accordingly, objectors and commenters may knowingly and willingly choose to accept some uncertainty as to future settlement terms and a reference to an outside method for resolving the uncertain issues.

Therefore, the Judges publish the Settlement with the current understanding that doing so is in compliance with the statutory opportunities to object or comment on the agreement.

The public may comment and object to any or all of the proposed regulations contained in this notice. Such comments and objections must be submitted no later than December 9, 2019.

List of Subjects in 37 CFR Part 383

Copyright, Sound recordings, Webcasters.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 383 as follows:

2. Amend § 383.1 paragraphs (a) and (c) by removing “2016” wherever it appears and adding in its place, “2021”, and by removing “2020” wherever it appears and adding in its place, “2025”;

3. In § 383.3 amend by:
   a. Revising paragraph (a) by removing the words “statutory licenses” and adding, in their place, the word “License”;
   b. Revising paragraphs (a)(1)(i) through (v);
   c. Revising paragraph (a)(2)(i) through (v); and
   d. Revising paragraph (c).

The revisions read as follows:

The revisions read as follows:

(a) * * *
   (1) 2021: $0.0208
   (ii) 2022: $0.0214
   (iii) 2023: $0.0221
   (iv) 2024: $0.0227
   (v) 2025: $0.0234
   * * * * *

(b) * * *
   (1) 2021: $0.0346
   (ii) 2022: $0.0356
   (iii) 2023: $0.0367
   (iv) 2024: $0.0378
   (v) 2025: $0.0390
   * * * * *

(c) Allocation between ephemeral recordings fees and performance royalty fees. The Collective must credit 5% of all royalty payments as royalty payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions through a Service are included in the 5%.

3. In § 383.4 amend paragraph (a) by:
   a. Removing the words “subscription transmissions” and adding, in their place, the words “Digital audio transmission”;
   b. Removing the words “preexisting satellite digital audio radio services” and adding, in their place, the words “Commercial Webcasters”;
   c. Removing the words “part 383, subpart B” and adding, in their place, the words “part 380, subpart A”;
   d. Removing the years “2013–2017” and adding, in their place, the years “2021–2025”;
   e. Removing the words “For purposes of this section” and adding, in their place, the words “For purposes of this part”.

Dated: November 1, 2019.

Jesse M. Feder,
Chief Copyright Royalty Judge.

[FR Doc. 2019–24271 Filed 11–7–19; 8:45 am]

BILLING CODE 1410–72–P

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 300

[23572] [AGENCY]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FR Doc. 2019–24271 Filed 11–7–19; 8:45 am]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“EPA” or “the agency”) in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add five sites to the General Superfund section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted